

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

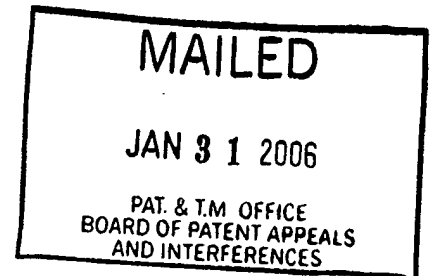
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEVIN SNOW McCURLEY and BENJAMIN CLAY REED

Appeal No. 2006-0423
Application 09/260,448

ON BRIEF



Before THOMAS, JERRY SMITH, and MACDONALD, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1 through 3, 5 through 42, 44 through 81 and 83 through 117.

Representative claim 1 is reproduced below:

1. A network multiplexing and tunneling system, comprising at least two devices connected across a network by a secure connection created at a user-level, wherein the secure connection is a single encrypted Secure Sockets Layer (SSL) Transmission Control Protocol (TCP) connection, each of the devices

Appeal No. 2006-0423
Application 09/260,448

authenticates the other device after the secure connection is opened, at least one of the devices multiplexes other connections through the secure connection after both the devices have been authenticated, and either endpoint of the secure connection can receive connection requests for the multiplexed other connections.

The following references are relied on by the examiner:

Coley et al. (Coley)	5,825,014	Oct. 20, 1998
Weinstein et al. (Weinstein)	6,094,485	Jul. 25, 2000
		(Filed Sept. 18, 1997)
Griffiths et al. (Griffiths)	6,286,045	Sep. 4, 2001
		(Filed May 19, 1997)
Raz	6,292,827	Sep. 18, 2001
		(Filed Jun. 20, 1997)

Freier et al., "The SSL Protocol, Version 3.0", (Nov. 18, 1996), pp. 1-58.

Fryer et al., "Microsoft Press Computer Dictionary", 3rd Edition, (1997), pp. 320, 482.

All claims on appeal stand rejected under 35 U.S.C. § 103. As to claims 1, 5 through 11, 14, 16, 17, 21, 22, 40 through 50, 53, 55, 56, 60, 61, 79, 83 through 89, 92, 94, 95 and 100, the examiner relies upon Freier in view of Weinstein as an initial combination of references. To this initial combination of references, the examiner relies upon Fryer as to claims 2, 28 through 39, 41, 67 through 78, 80 and 106 through 117; adds Griffiths as to claims 12, 51, and 90; adds Netscape as to claims 13, 52, and 91; adds Coley as to claims 15, 18 through 20, 23

Appeal No. 2006-0423
Application 09/260,448

through 25, 54, 57 through 59, 62 through 64, 93, 96 through 98, 101 through 103; and Raz as to claims 26, 65, and 104. Lastly, the examiner rejects claims 27, 66, and 105 in view of the combination of Freier in view of Weinstein, further in view of Raz and Coley.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and reply brief for the appellants' positions, and to the final rejection and answer for the examiner's positions.

OPINION

For the reasons set forth by the examiner in the answer, we sustain the rejection of each claim on appeal under 35 U.S.C. § 103, as expanded upon here. The bottom of page 3 of the principal brief indicates that each of independent claims 1, 40, and 79 falls together. It is further noted that these claims all fall within the initial stated rejection set forth by the examiner and no argument is presented as to any other claims including any of the other references relied upon by the examiner in the additional separately stated rejections.

Appellants' arguments do not contest the proper combinability within 35 U.S.C. § 103 of any of the references relied upon by the examiner in the variously stated rejections. In general, appellants take the approach that the combination of features of independent claims 1, 40, and 79 are not taught or suggested among the combination of teachings of Freier and Weinstein. The approach taken in both the brief and reply brief is essentially the same, where appellants reproduce a portion of the respective references to Freier and Weinstein relied upon by the examiner. The positions set forth at page 12 of the principal brief on appeal essentially have been repeated as rollup-type arguments at pages 11 and 12 of the reply brief.

Based upon the approach to the arguments set forth by appellants in the brief and reply brief, it appears like they are arguing essentially that the subject matter of the claims as a whole is not taught or suggested by the combined teachings and suggestions of Freier and Weinstein. That is, appellants essentially argue that the subject matter of the whole of any of independent claims 1, 40, and 79 is not taught or suggested by the applied prior art. Yet, by the following remarks, appellants have therefore not specifically argued what is not taught by the references applied by the examiner:

Instead, Freier merely describes SSL sessions, states that an SSL session may include multiple secure connections and multiple simultaneous sessions, describes SSL's authentication modes, and states that the SSL Record Protocol as being layered on top of a transport protocol such as TCP. Similarly, Weinstein merely describes SSL as a layered protocol and an SSL session as stateful.

This paragraph is set forth initially at page 12 of the principal brief on appeal and repeated at page 11 of the reply brief.

On the other hand, these reproduced remarks appear to be consistent with the examiner's statements as to what the references teach and suggest as to independent claims 1, 40, and 79 on appeal. We are therefore perplexed at the manner in which appellants seem to argue that the whole of each of these respective claims is not taught or suggested at all when properly combined within 35 U.S.C. § 103. We can therefore only surmise what the appellants appear to be arguing as the basic issue at page 12 of the brief which appears to be best expressed at the top of page 2 of the reply brief where appellants urge the combination of references does not teach or suggest multiplexing other connections through a secure connection over an established single TCP connection. Since the references plainly teach, and appellants appear to admit, as indicated earlier, that a secure connection exists over a conventional TCP connection, the issue

boils down to appellants' view that multiplexing other connections through a pre-existing or recognized secure connection is not taught or suggested to the artisan within 35 U.S.C. § 103.

It is with this view we strongly disagree. In this respect we agree with the examiner's view in reliance upon the explicit teachings at the bottom of page 9 and the top of page 10 of Freier's protocol as discussed in section 5.1 of this reference. Freier plainly states "[a]n SSL session may include multiple secured connections; in addition, parties may have multiple simultaneous sessions." In addressing this multiplexing argument at page 8 of the answer, the examiner makes reference to the Fryer definition, where the Fryer dictionary is considered a standard reference in the art, as defining multiplexing essentially as technically used in the communication arts in input/output operations for transmitting a number of separate signals simultaneously over a single channel or line. It appears to us that the noted portions in topic 5.1 at pages 9 and 10 of Freier essentially say the same thing in other words and that the artisan would well appreciate this, especially in the context of the commonly held definition of what multiplexing encompasses in the art as evidenced by Fryer.

Appeal No. 2006-0423
Application 09/260,448

In fact, we note that the entire discussion of topic 5 at page 9 of Freier dealing with "SSL protocol" is reproduced within column 8 of Weinstein beginning at line 38. It is this initial paragraph which is also instructive to understand the issue of multiplexing in this appeal:

SSL is a layered protocol. At each layer, messages may include fields for length, description, and content. SSL takes messages to be transmitted, fragments the data into manageable blocks, optionally compresses the data, applies a MAC, encrypts, and transmits the result. Received data are decrypted, verified, decompressed, and reassembled, then delivered to higher level clients.

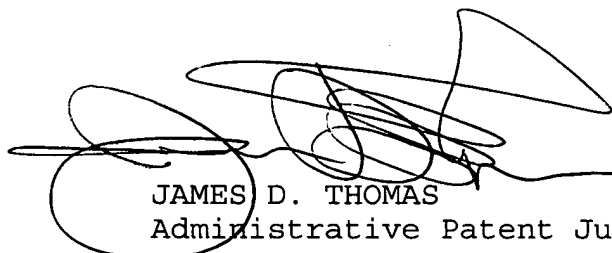

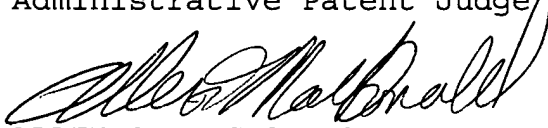
This portion indicates that plural messages may be sent on a single session or transmission and upon receipt, received messages are reassembled and delivered to plural clients. This paragraph indicates the simultaneity of the operations here and clearly indicates the respective multiplexing and demultiplexing operations to the artisan to the extent recited broadly in the claims on appeal.

In view of the foregoing, the decision of the examiner rejecting all claims on appeal under 35 U.S.C. § 103 is affirmed.

Appeal No. 2006-0423
Application 09/260,448

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a)(1)(iv).

AFFIRMED


JAMES D. THOMAS)
Administrative Patent Judge)
)

JERRY SMITH)
Administrative Patent Judge)
)

ALLEN R. MACDONALD)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES

JDT:pgc

Appeal No. 2006-0423
Application 09/260,448

Gates & Cooper LLP
Howard Hughes Center
6701 Center Drive West
Suite 1050
Los Angeles, CA 90045